



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Metermod Instrument Associates, Inc.

File: B-266145

Date: January 25, 1996

Frank M. Rapoport, Esq., Pepper, Hamilton & Scheetz, for the protester.
Tony Casoria, for MK Electronics, an interested party.
Charles J. Roedersheimer, Esq., Defense Logistics Agency, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly disclosed protester's price during conduct of procurement is denied where allegation is unsupported by any evidence in the record.

DECISION

Metermod Instrument Associates, Inc. protests the issuance of purchase order No. SPO920-95-M-124 to MK Electronics under a request for quotations (RFQ) issued by the Defense Electronics Supply Center (DESC), Defense Logistics Agency, for 33 wattmeters used in a load bank tester. Metermod alleges that the agency disclosed its price to MK Electronics and failed to either inform Metermod of an extended closing date for quotations or ask Metermod for a best and final offer (BAFO).

We deny the protest.

The RFQ in question was issued by DESC under the simplified procedures initiated by the agency for purchases up to \$25,000 in which RFQs are transmitted directly to an electronic bulletin board (EBB) maintained by the agency and generally remain on the EBB for 30 days. Firms desiring access to the EBB to review the RFQs and to submit quotes are required to register with the agency. Once registered, vendors can access the EBB by contacting an Electronic Data Interchange (EDI) service provider,¹ or through the vendors' own personal computers by dialing a telephone number or logging on to the Internet. Currently, vendors can provide quotes in

¹The agency maintains and makes available to interested vendors a list of EDI service providers that have been certified by the Department of Defense.

response to RFQs issued by DESC under these automated procedures or in paper format.

Here, the RFQ, posted on the EBB during May 1995, requested quotations by May 26 for 11 wattmeters, stock number PR YPE 95009-00094. Metermod quoted a price of \$694 per unit; MK Electronics quoted a price of \$739.10 per unit. MK Electronics also quoted a price of \$713.40 per unit for 25 wattmeters. Metermod responded via the EBB; MK Electronics submitted a paper quote.

DESC subsequently issued a second RFQ with a requested response date of July 28 for 22 of the same wattmeters. Subsequently, the agency consolidated the two RFQs. The DESC contract specialist contacted both Metermod and MK Electronics and requested that the firms quote on 33 wattmeters. Metermod submitted via the EBB on July 27 a unit price of \$587; MK Electronics submitted a paper quote of \$586.95 per unit. MK Electronics's handwritten quote was dated August 10 and stated that \$586.95 was the firm's "[b]est & [f]inal price." A purchase order for the 33 wattmeters was issued to MK Electronics on August 21. Metermod protested to our Office on September 14.

Metermod protests that MK Electronics' price reduction to within \$.05 per unit of Metermod's price cannot be a coincidence and argues that "[i]t is more likely than not" that the DESC contract specialist improperly informed MK Electronics of the price quoted by Metermod and "is biased in favor of MK Electronics." The protester argues that MK Electronics's price reduction is suspect since MK Electronics offered only a \$25.70 price reduction per unit from \$739.10 for 11 units to \$713.40 for 25 units, yet reduced its price \$126.45 per unit after being contacted by the contract specialist and asked to quote a price for only 8 additional units. The protester also alleges that DESC failed to inform Metermod that the closing date for the submission of quotes had been extended and failed to request a BAFO from Metermod although the agency did request a BAFO from MK Electronics.²

²DESC argues that this protest is untimely because it was filed more than 10 working days after August 28, the date Metermod knew or should have known of its protest grounds. DESC states that its EBB system is programmed to post award notifications no later than 7 days after award. Since award was made on August 21, the agency states that the notification appeared on the EBB no later than August 28 and therefore Metermod should have protested to our Office by September 13. Upon our request for written evidence of award notification, the agency specifically stated that it had no paper records of when the announcement was posted on the EBB and could not through its system programming generate an after-the-fact "time tag" for the posting. Metermod submitted an affidavit from its government procurement representative in which she states that she first became aware of the

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While Metermod contends that MK Electronics's price reduction to within \$.05 per unit cannot be a coincidence, the record contains no evidence of bias on behalf of the awardee and no evidence that Metermod's prices were disclosed. We recognize that the closeness of submitted quotes such as occurred in this case can raise an apprehension that quotes received via electronic means are not protected from electronic "eavesdropping." Agencies must, of course, take appropriate steps to ensure the security of business information that is transmitted via electronic means. National Institute of Standards and Technology-Use of Electronic Data Interchange Technology to Create Valid Obligations, 71 Comp. Gen. 109 (1991). However, we will not sustain a protest against alleged improper price disclosures, bias or other wrongdoing by a contracting agency based upon speculation only. Advanced Seal Technology, Inc., B-239191, July 24, 1990, 90-2 CPD ¶ 73.

Here, the protester has not provided any probative evidence to show bias or to show that prices were disclosed and has merely asserted that it appears that prices were disclosed. The mere existence of substantially similar prices does not constitute proof that a disclosure actually occurred. Indeed, the contract specialist has submitted an affidavit in which she states that she did not disclose Metermod's prices to MK Electronics. Similarly, MK Electronics's vice president submitted an affidavit stating that no one from DESC disclosed to MK Electronics the prices being offered by Metermod on this procurement. While MK Electronics's price on the increased requirement was just slightly lower than the protester's and lower than previous quotes MK Electronics submitted, in the absence of any probative evidence, we are not willing to conclude, as the protester does, that this must have resulted from improper government conduct, rather than from competition or mere coincidence.

In response to Metermod's allegations that the agency failed to request a BAFO from Metermod and failed to inform Metermod of the extension for the submission of quotes, the agency states that it never requested a BAFO from any offeror and it did not extend the date for the submission of quotes. Specifically, as to the BAFO, the agency states that it never requested a BAFO from MK Electronics. Rather, the contract specialist, in her affidavit to our Office, states that while she did contact

²(...continued)

award to MK Electronics on September 12 and that she did not see any notification of the award on the EBB prior to that date. Because DESC has no evidence as to the actual time the notification appeared on the EBB and the protester has sworn that it first learned of the award on September 12, we resolve the possible doubt as to when the protester became aware of its basis for protest in favor of the protester for purposes of determining timeliness. See Warren Pumps, Inc., B-258710, Feb. 13, 1995, 95-1 CPD ¶ 79; Eklund Infrared, 69 Comp. Gen. 354 (1990), 90-1 CPD ¶ 328.

MK Electronics, she merely requested pricing for the additional units to be purchased. According to the contract specialist, the use of the term "best and final" in MK Electronics's August 10 quote "was strictly [the firm's] choice of words." MK Electronics has also submitted an affidavit in which its vice president states that the contract specialist did not request a BAFO and that the firm, in confirming its price for the increased quantity, simply used its standard terminology "our best & final price." In any event, because Metermod was given a similar opportunity and did submit a price on the increased quantity of wattmeters, we see no reason to conclude that the protester was prejudiced or competitively disadvantaged.

Similarly, the agency states that it did not extend the due date for the submission of quotes. While the RFQ requested that quotes be submitted by July 28, an RFQ is a means of gathering information on the availability and/or prices of commercial items or services. Thus, an agency is not precluded from considering information that it receives any time prior to its issuance of a purchase order, even if that information becomes available after the date established by an RFQ for receipt of quotations. See John Blood, B-261477, Sept. 27, 1995, 95-2 CPD ¶ 147. Accordingly, the agency could properly consider MK Electronics's submission of August 10.

The protest is denied.

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